the same data and in the same form as that submitted in the Numbering Resource

Utilization/Forecast ("NRUF") Report. Allowing state commissions to access the NRUF reports

on an individual-carrier basis would be an efficient and quick way to obtain carrier NRUF data.

BellSouth, however, objects to allowing state commissions access to any data beyond

carrier NRUF reports. BellSouth has no knowledge of how the NeuStar database is structured

and therefore what other data, if any, would be made available to state commissions. BellSouth

is concerned that, if state regulators are allowed direct access to compiled or summarized data,

they could draw improper conclusions or misinterpret the data. Thus, BellSouth supports state

commission access to the NANPA's database so long as the states have access only to the NRUF

reports filed by individual carriers for their particular state. In other words, a state regulator's

access to the NANPA database should be limited to the data concerning the rate centers and

NPAs in that regulator's state.

V. THE COMMISSION SHOULD PERMIT CUSTOMERS TO RESERVE

TELEPHONE NUMBERS FOR A FEE.

BellSouth favors allowing customers to pay for unlimited reservations of numbers on a

month-to-month basis.<sup>39</sup> Further, BellSouth agrees with the North American Numbering

Council's ("NANC") conclusion that end users should be responsible for paying the fee to

reserve numbers. 40 This arrangement allows carriers to accommodate the needs of their

customers while simultaneously providing a monetary incentive to minimize the misuse of

numbering resources. BellSouth also supports NANC's determination that "a monthly recurring

See Second FNPRM, ¶ 152.

<sup>40</sup> Letter from John R. Hoffman, Chairman, North American Numbering Council, to Dorothy

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Attwood, Chief, Common Carrier Bureau, FCC (dated Sept. 20, 2000) ("NANC Letter").

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fee, charged by service providers to the end users extending number reservations, is an

appropriate means of providing such a disincentive."41

The Commission should leave to the discretion of the individual service provider

decisions such as whether or not to allow reservation extensions for a fee and what that fee might

be. The NANC's failure to reach consensus on a permanent fee or range of fees illustrates the

difficulty of developing a payment mechanism to accommodate the needs of all carriers and all

customers in all situations. BellSouth therefore urges the Commission to defer to the judgment

of individual service providers in this area. They are in the best position to assess their

respective costs to hold, bill, and report number reservations and determine whether or not to

allow reservation extensions for a fee.

VI. THE COMMISSION NEED NOT GRANT STATES ADDITIONAL AUTHORITY

TO CONDUCT AUDITS.

The Commission asks whether state commissions should be given independent authority

to conduct "for cause" and random audits in lieu of or in addition to the national audit program

established in the Commission's Second Report and Order. 42 The Commission recognizes that

most, if not all, state commissions already have independent authority to perform audits under

state law. 43 BellSouth therefore sees no reason to grant states any additional audit authority.

Any audit program should be done under a national approach using national guidelines to

achieve uniformity. Since most states already have independent audit authority, the Commission

need not grant states any further audit power.

<sup>41</sup> NANC Letter at 1.

<sup>42</sup> Second FNPRM, ¶ 155.

<sup>43</sup> *Id.* 

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# VII. THE COMMISION SHOULD NOT ADOPT A MARKET-BASED ALLOCATION SYSTEM FOR TELEPHONE NUMBERS.

BellSouth continues to oppose a market-based allocation system for numbering resources. The existing record convincingly demonstrates the legal, policy, and administrative challenges associated with requiring carriers to pay for numbering resources. The Commission concedes that most commenters previously opposed a market-based allocation of numbering resources. Nonetheless, the Commission seeks additional comment on this issue. BellSouth opposes charging for telephone numbers for the reasons detailed below.

Legal Basis. As a threshold matter, BellSouth does not believe that the Commission possesses the legal authority to require carriers to pay for telephone numbers through a sales or auction mechanism. Congress has not granted the Commission the power to charge for numbers – either explicitly or implicitly. Neither the Communications Act of 1934 nor the Telecommunications Act of 1996 ("1996 Act") grants any express authority to impose such a payment mechanism.

Any suggestion that Section 251(e)(2) of the 1996 Act may be a source of authority also fails. Section 251(e)(2) provides that "[t]he costs of establishing telecommunications numbering

<sup>&</sup>lt;sup>44</sup> See, e.g., Comments of the Ad Hoc Telecommunications Users Committee, CC Docket No. 99-200, at 20-21 (filed July 30, 1999); Comments of AirTouch Communications, Inc., CC Docket No. 99-200, at 24-26 (filed July 30, 1999); Comments of Ameritech, CC Docket No. 99-200, at 53-54 (filed July 30, 1999); Comments of AT&T Corp., CC Docket No. 99-200, at 61-63 (filed July 30, 1999); Comments of Cox Communications, Inc., CC Docket No. 99-200, at 21-23 (filed July 30, 1999); Comments of McI WorldCom, CC Docket No. 99-200, at 30-31 (filed July 30, 1999); Comments of Omnipoint Communications, Inc., CC Docket No. 99-200, at 31-33 (filed July 30, 1999).

<sup>45</sup> Second FNPRM, ¶ 156.

administration arrangements and number portability shall be borne by all telecommunications

carriers on a competitively neutral basis . . . . "46 The Commission's authority under this

provision does not include the power to impose fees above and beyond what is necessary to

recover the costs of number administration and number portability. Today, carriers already pay

for a variety of services and functions associated with numbering resources. For example,

telecommunications carriers must pay for number administration, number portability, area code

relief measures, and now number pooling. These are all legitimate costs that result from a

service, a process, or increased functionality associated with numbers. Payment for numbers,

however, does not fall into any of these categories. Consequently, imposing a fee for numbers

would essentially be imposing a tax on carriers, and only Congress has the authority to impose a

tax.

The Commission's attempt to use Section 254 as a basis to implement a market-based

allocation system for numbers also must fail.<sup>47</sup> The Commission's statement that "[t]here are

some inherent difficulties with this proposal"<sup>48</sup> is an understatement. Section 254 requires

telecommunications carriers to "make an equitable and nondiscriminatory contribution to the

preservation and advancement of universal service."49 As the Commission correctly

acknowledges, the use of a market-based allocation system to fund universal service "would shift

primary responsibility for universal service funding primarily from IXCs and wireless carriers to

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<sup>46</sup> 47 U.S.C. § 251(e)(2).

<sup>47</sup> See Second FNPRM, ¶ 159.

48 Second FNPRM, n.371.

<sup>49</sup> 47 U.S.C. § 254(b)(4); see also 47 U.S.C. § 254(d).

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that contributions be made "on an equitable and nondiscriminatory basis." Moreover, it would

be inappropriate to use funds derived from the use of numbering resources to pay for universal

service. If the Commission adopts a payment scheme for numbers, any fees collected should

offset carrier contributions to the NANPA or the Pooling Administrator for number

administration or pooling activities.

Policy Basis. Even if the Commission possesses the legal authority to charge for

telephone numbers, such an approach would not serve the public interest. As numerous

commenters previously pointed out and the Commission has recognized, numbers are a "public

resource" that should be free to all users based on need.<sup>51</sup> In order to achieve the Commission's

policy goal of efficient use of numbers, the "price" for numbers would have to be high enough to

dissuade carriers from paying for numbers they may not need. A high price for numbers

therefore would place new entrants and smaller carriers at a competitive disadvantage.

The Commission rejected a similar proposal to charge for the use of telephone numbers

when it sought to determine the best way to recover the costs of number administration.<sup>52</sup> In

rejecting that proposal, the Commission found that "per-number charges would be inequitable, as

they may fall disproportionately on the fastest growing users of numbers such as wireless service

providers."53 This type of inequity remains a possible risk under the Commission's most recent

Second FNPRM, n.371.

<sup>51</sup> Administration of the North American Numbering Plan, CC Docket No. 92-237, Report and

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Order, 11 FCC Rcd 2588, 2591, ¶ 4 (1995) ("NANP Order").

<sup>52</sup> See NANP Order at 2629, ¶ 100.

<sup>53</sup> *Id.* 

proposal to charge for numbers. Instead of numbers being allocated based on need, numbers

would be assigned based on a carrier's ability to pay. Such a system would not prevent carriers

with deep pockets from hoarding numbers. In addition, the cost would inevitably be passed on to

consumers. Thus, consumers would incur higher costs for services and would be disadvantaged

because those carriers unable to pay for numbers would be excluded from the market, thereby

diminishing competition and consumer choice.

BellSouth believes that the root cause of the current numbering situation is not the

absence of a market-based system for allocating numbers, but rather the inherent infirmities in

the existing system that, to some extent, have been addressed by the Commission's recent

numbering orders. The two major factors contributing to numbering resource exhaust are: (1)

the allocation of numbers in blocks of 10,000, regardless of a carrier's need for numbers; and (2)

the initial footprint requirement of a full NXX on a per-rate center basis. The numbering

situation cannot be resolved until these factors are addressed.

The Report and Order took the initial steps to address the first contributor to number

exhaust – allocation of numbers in blocks of 10,000. In the Report and Order, the Commission

established "a single system for allocating numbers in blocks of 1,000, rather than 10,000,

wherever possible . . . and establish[ed] a plan for national rollout of thousands-block number

pooling."54 This fundamental change in the allocation of numbers, combined with national

pooling efforts, will help minimize the inefficiencies in the existing system.

States need to address the second cause of number exhaust by examining revenue-neutral

rate center consolidation. Reducing the number of rate centers will reduce the number of NXX

<sup>54</sup> Report and Order, ¶ 5.

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codes that have to be assigned. However, as demonstrated above in Section II., the

Commission's current MTE rule deters rate center consolidation. In the absence of a change to

the existing MTE requirement, rate center consolidation will no longer be a viable conservation

method.

Administrative Basis. Finally, implementation of a market-based allocation system for

numbers would be costly and administratively burdensome. Moreover, such a scheme gives rise

to a host of questions that would have to be addressed.

• If carriers were to pay for numbers, for what and to whom would they actually make

payment?

• Does payment imply ownership of the number or would a carrier simply pay to

"lease" the number?

Would the Commission's payment scheme apply to <u>all</u> numbering resources,

including carrier identification codes ("CICs") and vertical service codes?

How would the price be established?

• Would "verification of need" still be required?

How would ported numbers be treated in a market-based approach?

Would discounts be given to carriers that use numbers efficiently and how would this

efficiency be measured?

How would the Commission treat the embedded base of numbers?<sup>55</sup>

It is unnecessary to consider a payment mechanism for numbers. The Commission has

just established a new number optimization framework that completely transforms the traditional

BellSouth strongly opposes the Commission's tentative conclusion to require all carriers to pay for their embedded base of numbers. See Second FNPRM, ¶ 170. If the Commission adopts

a market-based system, it should not require payment for embedded numbers. When the

Commission auctioned spectrum, it did not require entities holding existing spectrum to pay for

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system of allocating numbers. The Commission should allow the various administrative and technical conservation measures time to work. The FCC, state commissions, the NANPA, and carriers should focus their energies and resources on implementing the various requirements adopted in the orders in this proceeding rather than devising and evaluating a pricing mechanism.

VIII. THE COMMISSION CAN AND SHOULD PROCEED WITH ESTABLISHING A NATIONAL COST RECOVERY MECHANISM.

In its *Second Report and Order*, the Commission again declined to adopt a national cost recovery mechanism because, according to the Commission, the data in the record is insufficient to determine the amount and/or magnitude of the costs associated with thousands-block number pooling. Therefore, the Commission is asking parties to provide further comment and cost studies that quantify the shared industry and direct carrier-specific costs of number pooling. The Commission also "emphasize[s] that cost studies should take into account the cost savings associated with thousands-block number pooling in comparison to the current numbering practices that result in more frequent area code changes."

The lack of detailed cost information, however, should not preclude the Commission from establishing a federal cost recovery mechanism. The Commission established a cost recovery scheme for number portability prior to having detailed cost information. In the number portability proceeding, carriers did not submit cost studies until after the Commission had

the spectrum already held. Similarly, the Commission should refrain from requiring a carrier to pay for its embedded base of numbers. Any fees imposed should be on a prospective basis only.

<sup>&</sup>lt;sup>56</sup> Second FNPRM, ¶ 182. BellSouth is in the process of quantifying the costs associated with providing number pooling and intends to submit a detailed cost study to the Commission once it is available.

<sup>&</sup>lt;sup>57</sup> Second FNPRM,  $\P$  182.

<sup>&</sup>lt;sup>58</sup> *Id*.

already adopted a cost recovery mechanism. There is no reason why the Commission cannot take the same approach here. BellSouth therefore urges the Commission to move quickly to develop a national cost recovery framework even in the absence of extensive cost data.

The Commission's claims of a lack of cost data seem to ignore the cost figures previously placed on the record. For example:

- Bell Atlantic estimated its carrier-specific costs directly related to number pooling (Type 2 costs) to be between \$80 and \$100 million.<sup>59</sup>
- SBC's estimate of its carrier-specific costs directly related to number pooling was approximately \$213.3 million. 60
- According to US WEST's preliminary assessment, it expected to incur more than \$345 million in recoverable expenses to implement pooling.<sup>61</sup>

Clearly, these costs are not inconsequential and must be subject to full cost recovery.

In addition to the Type 2 costs described above, each carrier will incur shared industry costs (Type 1 costs) for number pooling administration. Several commenters previously provided preliminary estimates of these shared industry costs. Bell Atlantic estimated that, over a five-year period, its portion of the shared industry costs would be between \$25 and \$35 million. SBC estimated that its allocated share of Type 1 costs would be \$8 million. Finally,

<sup>&</sup>lt;sup>59</sup> Bell Atlantic Comments on *FNPRM*, CC Docket No. 99-200, at 4 (filed May 19, 2000).

<sup>&</sup>lt;sup>60</sup> SBC Comments on *FNPRM*, CC Docket No. 99-200, at 3 (filed May 19, 2000). This figure underestimates total costs because SBC excluded the costs associated with its participation in state-ordered pooling trials. SBC Comments at 3.

<sup>&</sup>lt;sup>61</sup> US WEST Redacted Comments on *FNPRM*, CC Docket No. 99-200, at 4 (filed May 19, 2000).

<sup>&</sup>lt;sup>62</sup> Bell Atlantic Comments on *FNPRM*, CC Docket No. 99-200, at 3 (filed May 19, 2000).

<sup>63</sup> SBC Comments on FNPRM, CC Docket No. 99-200, at 3 (filed May 19, 2000).

GTE's estimate of the total shared industry costs for the years 2000 through 2004 was between \$50 and \$90 million.<sup>64</sup>

In order to achieve full recovery of the costs identified above, BellSouth recommends that the Commission adopt a similar cost recovery mechanism as that established in the number portability proceeding. The Commission should allow ILECs to recover their carrier-specific pooling costs directly related to implementing pooling either by extending the duration of the number portability tariff or by increasing the current number portability surcharge. These solutions are advantageous because they can be implemented easily through a simple tariff revision and would lead to less customer confusion than the introduction of a new charge. Thus, the most efficient and competitively neutral approach is to either increase the amount of the existing LNP end-user charge or to extend the duration of the number portability tariff.

Finally, BellSouth questions the need to develop cost studies that "take into account the cost savings associated with thousands-block number pooling in comparison to the current numbering practices that result in more frequent area code changes." Any cost savings associated with number pooling would be purely speculative at this point. BellSouth cautions the Commission against using a cost savings formula that compares speculative pooling savings with the actual costs of area code relief. The results of such a formula could be misleading. Moreover, it is unclear what value can be derived from this exercise. Although number pooling may extend the life of specific NPAs, it does not eliminate the need for NPA relief. Thus, on an

<sup>&</sup>lt;sup>64</sup> GTE Comments on FNPRM, CC Docket No. 99-200, at 14 (filed May 19, 2000).

<sup>&</sup>lt;sup>65</sup> Second FNPRM, ¶ 182.

NPA-by-NPA basis, the only cost savings from number pooling will be the time value of money associated with the deferral of NPA relief – which would be a minimal figure.

# IX. THE COMMISSION SHOULD NOT REQUIRE NON-LNP CAPABLE CARRIERS TO IMPLEMENT LNP SOLELY TO PARTICIPATE IN POOLING.

The Commission seeks comment on whether to extend pooling requirements to non-LNP capable carriers. 66 BellSouth objects to such a proposal. At this time, the jury is still out on the benefits of thousands-block number pooling. For example, on two separate occasions, the NANPA has given vastly different estimates on the impact of number pooling on the exhaust of the North American Numbering Plan. 67 Until there is more reliable and verifiable evidence to demonstrate that the benefits of number pooling outweigh the costs, the Commission should not extend pooling beyond the initial pooling areas. Moreover, non-LNP capable carriers should not be forced to implement number portability for the sole purpose of participating in pooling. Such a requirement would be extremely costly for non-LNP capable carriers without any significant countervailing benefits. Moreover, in the end, customers would bear the burden through increased rates as these non-LNP capable carriers seek to recover their costs for implementing number portability as well as pooling.

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<sup>66</sup> Second FNPRM, ¶ 185.

<sup>&</sup>lt;sup>67</sup> In its 1999 Exhaust Study, the NANPA projected that the North American Numbering Plan ("NANP") would exhaust in 2008 or 2009 in the absence of pooling and in 2094 with pooling participation by all carriers (LECs, CLECs, paging, and CMRS). North American Numbering Plan Exhaust Study, submitted by the North American Numbering Plan Administration (NANPA) Lockheed Martin CIS at 2-9 and 4-2 (dated April 22, 1999). In September 2000, the NANPA projected that the NANP would exhaust in 2015, assuming the implementation of pooling as well as an unrestricted demand for codes (*i.e.*, no rationing). NANPA Report to the NANC at 5 (dated Sept. 19-20, 2000).

### X. AN EXPEDITIOUS "SAFETY VALVE" PROCESS IS ABSOLUTELY ESSENTIAL.

The Commission seeks comment on the need to establish a "safety valve" apart from the general waiver process in order to allow carriers that do not meet the utilization threshold in a given rate center to obtain additional numbering resources. The record overwhelmingly supports the development of a "safety valve procedure."

There will inevitably be instances when a carrier cannot meet the utilization threshold, but nonetheless has a legitimate need for numbers in a rate center. As the Commission appropriately recognizes, "certain conditions may prevent carriers from meeting the rate centerbased utilization threshold when they actually need additional numbers, for example to meet a specific customer request . . . ."<sup>70</sup>

Plans to expand existing geographic service areas, offer service promotions, or satisfy a large customer request, to name just a few examples, should constitute legitimate business needs that warrant granting a request for additional codes despite less-than-required utilization. Under these circumstances, a carrier should not be precluded from obtaining numbering resources simply because it has not met the utilization threshold.

BellSouth therefore urges the Commission to make clear that state commissions have authority to hear and decide carrier requests for waiver of the utilization threshold requirement.

The current rules explicitly allow carriers to challenge the NANPA's denial of a code directly to

<sup>&</sup>lt;sup>68</sup> Second FNPRM, ¶ 188.

<sup>&</sup>lt;sup>69</sup> See, e.g., BellSouth Comments on FNPRM, CC Docket No. 99-200, at 6-7 (filed May 19, 2000); PCIA Comments on FNPRM, CC Docket No. 99-200, at 3-5 (filed May 19, 2000); Sprint Comments on FNPRM, CC Docket No. 99-200, at 2-4 (filed May 19, 2000); Verizon Wireless Comments on FNPRM, CC Docket No. 99-200, at 6-11 (filed May, 19, 2000).

<sup>&</sup>lt;sup>70</sup> Second FNPRM, ¶ 188.

the appropriate state regulatory commission.<sup>71</sup> This process is more efficient and may allow for

a more timely resolution than requiring carriers to bring requests before the Commission. As

long as a carrier can make a bona fide showing of a legitimate business need to obtain a growth

code despite the inability to meet the utilization threshold requirement, that carrier should be

granted a code. Furthermore, any "safety valve" process adopted must be expeditious. Carriers

should not be forced to endure a protracted review process that deprives customers of service.

As the Commission has recognized, "[flor competition to continue to develop, all carriers must

have access to numbering resources."72

If the Commission refuses to modify its MTE rule as requested above in Section II., the

Commission should allow states to consider carrier requests to waive the MTE rule. As

discussed above, the current MTE rule poses significant problems for BellSouth and other

carriers. The NANPA's denials of BellSouth's code requests for failure to satisfy the rule

limiting the MTE to six months has risen to 16 since the Report and Order was clarified in July

2000 in a *Public Notice*. This averages out to approximately two denials per month, and

BellSouth is just one of many carriers facing this problem.

There is no way that the Commission could review and decide multiple carrier challenges

to code denials based on the current MTE rule in the time frame necessary to allow carriers to

satisfy customer demands. The Commission could potentially find itself swamped with

hundreds of petitions or waiver requests. Rather than create an administrative nightmare for

<sup>71</sup> 47 U.S.C. ¶ 52.15(g)(3)(iv).

Petition for Declaratory Ruling and Request For Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Are Codes 412, 610, 215, and 717,

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BellSouth Comments CC Docket No. 99-200 February 14, 2001 itself, state commissions, carriers, and customers, the Commission should either: (1) modify the

MTE rule to allow a carrier to calculate MTE on a per-switch basis if that carrier operates

multiple switches in a rate center; or (2) at a minimum, allow a carrier with multiple switches in

a rate center to calculate MTE at the switch level if that carrier meets the required utilization on a

rate center basis. Modification of this rule will not lead to inefficient numbering usage. Curriers

- both pooling and non-pooling - still have to comply with the utilization threshold requirement.

Thus, the Commission need not worry that modifying the MTE rule will lead to carrier misuse of

numbers.

XI. CONCLUSION

For all of the foregoing reasons, BellSouth urges the Commission to take the actions

requested herein.

Respectfully submitted,

BELLSOUTH CORPORATION

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Telecommunications Act of 1996, CC Docket No. 96-98, Memorandum Opinion and Order on Reconsideration, 13 FCC Red 19009, 19033, ¶ 38 (1998).

### **CERTIFICATE OF SERVICE**

I do hereby certify that I have this 14<sup>th</sup> day of February 2001 served the following parties to this action with a copy of the foregoing BELLSOUTH CORPORATION COMMENTS by hand delivery or by placing a true and correct of the same in the United States mail, postage prepaid, addressed to the parties listed on the attached service list.

Juanita H. Loo

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